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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.929 OF 2005
IN
SUIT NO.933 OF 2005

M/s.Jhaveri Industries)
a partnership firm duly registered)
under the Indian Partnership Act, 1932)
carrying on business at 32, Annapurna)
Industrial Estate, 46, Tilak Road)
Ghatkopar (E), Mumbai 400 077).. PLAINTIFFS

VERSUS

Majethia Masala)
a Company carrying on its business)
at Main Bazar Road, Virar (East))
401303, District Thane.).. DEFENDANTS

Mr.Salil Shah i/b.M/s.Purnanand & Co. for the Plaintiffs.

Mr.M.A.Mahadgut for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 25TH JULY 2006

ORAL JUDGMENT :

. The Plaintiffs have filed the present Suit contending that the Defendants have infringed their trade mark by using the word Rajwadi. The Plaintiffs also contend that by using the word Rajwadi, the Defendants are passing off their own products as those of the Plaintiffs. The Plaintiffs have therefore sought an injunction against the Defendants from using the mark "Rajwadi" or using the word "Rajwadi" on any of their

products. The Plaintiffs have also claimed for injunction against the Defendants for passing off their goods by using deceptively similar mark, "Rajwadi".

2. The Plaintiffs are a partnership firm carrying on the business of manufacturing Indian spices, condiments and masalas for cooking. The Plaintiffs contend that they are owners of a trade mark "Badshah Rajwadi" in India. They have an annual sale in respect of those brands of Rs.28,63,04,813/- in respect of those brands. The Plaintiffs have claimed in the suit that they have a registered trade mark bearing Registration no.273890 in Class 30. They have also applied for registration of the mark in respect of spices and related products for cooking. Undisputedly, the word Rajwadi has a disclaimer and only the word "Badshah" has been registered as seen from the certificate of registration of Trade Marks issued under the Trade Marks Act, 1999. The word mark "Badshah" is registered.

3. The Plaintiffs contend that the Defendants have entered in business of selling spices, masalas and condiments in 2004 and introduced the word "Rajwadi" for their "sabji masala". The Plaintiffs contend that the use of the mark "Rajwadi" would result in a unwary purchaser of an average intelligence being misled into buying the Defendants' product assuming them to be the

products of the Plaintiffs. According to the Plaintiffs, since they have a registered trade mark Badshah Rajwadi, the Defendants have infringed their mark by using the word Rajwadi.

4. The learned Counsel appearing for the Plaintiffs has pointed out the two names which are annexed to the affidavit in support of the Motion indicating that the Rajwadi Sabji Masala introduced by the Defendants much later and only as a means to corner the market which the Plaintiffs enjoyed. The learned Counsel submits that their can be no dispute that the Plaintiffs' mark Badshah Rajwadi is a registered and, therefore, any use of the word Rajwadi would amount to infringing the Plaintiffs' trade mark. He further submits that in any event an action of passing off can be maintained by the Plaintiffs against the Defendants. He supports this submission by pointing out that the Plaintiffs have enjoyed the goodwill in respect of the various spices manufactured by them over the years. The sales figures annexed to the Plaint also, according to the learned Counsel, indicate that the Plaintiffs enjoy a wide reputation as can be seen from the turnover of the sales. The learned Counsel contends that in spite of bringing to the notice of the Defendants that they had infringed the Plaintiffs' mark and were passing off their products as those of the Plaintiffs, the

Defendants have refused to cease and desist from marketing their products using the word "Rajwadi". The learned Counsel for the Plaintiffs has relied on the judgments in the case of *Procter & Gamble (India) Ltd., Mumbai and another* vs. *Endolabs Limited, Indore and another*, **2000 (3) Mh.L.J. 637**, *Godfrey Phillips India Ltd.* vs. *Girnar Food & Beverages Pvt. Ltd.*, **(1998) 9 SCC 531**, *Pidilite Industries Ltd.* vs. *S.M.Associates & ors.*, **2004 (28) PTC 193 (Bom)** and *M/s.F.M.Diesels Ltd.* vs. *M/s.S.M.Diesels*, **1994 PTC 75**.

6. The Defendants, on the other hand, have contended in the affidavit in reply to the Motion that the word Rajwadi is a generic term. It is used only in a descriptive form and the Plaintiffs cannot have any right to the exclusive use of the term Rajwadi. The Defendants have annexed the certificate issued by the Registrar of Trade Marks indicating that the word Badshah has been registered with the disclaimer in respect of the word Rajwadi and the letter "K". It is also submitted that the Defendants' mark is Majithia Fine Masalas. The Defendants have registered a label mark which is used for spices, powdered spices including turmeric, chilli and coriander, mixed spices and spice extracts included in Class 30. The Defendants have annexed to their affidavit various cartons indicating the various spices that they manufacture and market.

One such carton is of "Rajwadi Sabji Masala". The Defendants have, therefore, contended that the word "Rajwadi" is used only as a generic or a not descriptive term and not as a distinctive or exclusive word by the Plaintiffs. The Defendants have relied on the list of products manufactured by the Plaintiffs in support of their contention that Rajwadi is only a type of masala and, therefore, there can be no exclusive use of the word Rajwadi. Various other documents have been relied on including the products of other masala manufacturers indicating that Rajwadi is a commonly used variety of garam masala.

7. The learned Counsel for the Defendants submits that the Plaintiffs have instituted the present Suit dishonestly by making statements to the effect that the word mark Badshah Rajwadi Masala is registered. The learned Counsel submits that what has been registered is only the word Badshah and hence the disclaimer in respect of the word Rajwadi. He submits that in such circumstances, there can be no infringement of the trademark on the part of the Defendants by using the word Rajwadi. The learned Counsel places reliance on the judgment in the case of *S.P.Chengalvaraya Naidu* vs. *Jagannath*, **AIR 1994 SC 853**, in support of his submission that a person who approaches the Court with unclean hands is not entitled to any relief, more so any interim

relief.

8. The learned Counsel then points out that the construction of the sales figures does not give a true picture of the sales in respect of Rajwadi Garam Masala claimed by the Plaintiffs. The Chartered Accountant of the Plaintiffs who has furnished these figures has certified the statement indicates the turn over (sales) of the goods in respect of M/s.Jhaveri Industries i.e. the Plaintiffs for the years 1990-91 and 2003-04. In such circumstances, submits the learned Counsel, no reliance can be placed on these sales figures as they are not confined to Badshah Rajwadi Garam Masala.

9. The learned Counsel then submits by placing reliance on the judgment of the Apex Court in the case of *Kaviraj Pandit Durga Dutt Sharma* vs. *Navratna Pharmaceuticals Laboratories*, **AIR 1005 SC 980**, that it is for the Plaintiffs to establish that it enjoys a good reputation in the market and that this reputation has led to a wide market with a good sales turnover. He submits that the Plaintiffs have not been able to establish their case of passing off against the Defendants.

10. In my view, the Plaintiffs have not established even prima facie that the Defendants are guilty of

either infringement of their trade mark or passing off. The Plaintiffs claim that the use of the word Rajwadi by the Defendants would amount to infringement of the registered trade mark. The question of infringement would arise only if the entire word Badshah Rajwadi was registered. Undoubtedly, the Plaintiffs have a registration for the word mark Badshah, where as "Rajwadi" has been disclaimed. The Defendants are using the word "Rajwadi" to qualify one of their spices i.e. "Sabji Masala". In such circumstances, there cannot be any infringement by the Defendants of the Plaintiffs' trade mark.

11. The word Rajwadi being disclaimed, obviously, means therefore, that it is a descriptive word which can be used by other manufacturers as seen from the affidavit filed by the Defendants. This word is used to describe one type of masala. This masala, according to the Defendants, has originated in Rajasthan and, therefore, in my view, the action of passing off is not maintainable, prima facie.

12. The judgments relied on by the learned Counsel for the Plaintiffs are in respect of products where the entire word mark was registered. In respect of the term Hayward 2000 in the case of *Shah Wallace & Company Limited* vs. *Castle Douglas Industries Limited and*

another (**Notice of Motion No.1259 of 1994 in Suit No.2037 of 1994**), a learned Judge of this Court held that the numeral 2000 was part of the trade mark Haywards 2000 and, therefore, the Court came to the conclusion that an action in passing off was sustainable. Similarly, in the case of *Pidilite Industries* (supra), the Court considered whether the mark SM-Seal used by the Defendants was similar with the label mark M-Seal of the Plaintiffs. This Court came to the conclusion that although there were various other manufacturers using the the same logo, there was no evidence produced much less the extent of use. This judgment, in my opinion, would not support the case made out by the Plaintiffs as, in the present case, there is no question of using the word Rajwadi as a suffix. The word is used separately and qualifies or describes a particular type of Masala. In such circumstances, in my view, the Plaintiffs have not made out any case for granting any interim relief. Apart from this, in the case of *Pidilite Industries* (supra), the trade mark M-Seal was registered. In the present case, the Plaintiffs have registered the trade mark as Badshah and not Badshah Rajwadi. Similarly, in the case of *M/s.F.M.Diesels Ltd.* (supra), the use of the word Marshal was objected to by the Plaintiffs. The Plaintiffs being prior user of the mark were granted an injunction.

13. In my view, the Motion must fail as the word Rajwadi is used as a generic term or a descriptive word and, therefore, no case has been made out by the Plaintiffs.

14. Notice of Motion dismissed.